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No. 10-1050

IN THE

Supreme Court of the United States

DREW WHITLEY,

Petitioner,

v.

COUNTY OF ALLEGHENY, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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SUMMARY OF ARGUMENT

A writ of certiorari should not be granted in this case where the Third Circuit Court of Appeals affirmed the Order of the United States District Court for the Western District of Pennsylvania granting summary judgment in favor of the County of Allegheny and the individual homicide detectives. The District Court did not find that a municipal policy was the direct cause of a constitutional deprivation, *City of Canton v. Harris,* 489 U.S. 378, 385 (1989), and further explained that a municipality cannot be liable under the theory of vicarious liability and when one of its officers is not primarily liable. *City of Los Angeles v. Heller,* 475 U.S. 796, 798 (1986) (per curiam); *Monell v. New York City Department of Social Services,* 436 U.S. 658, 694 (1978).

ARGUMENT

A writ of certiorari should not be granted in this case where the Third Circuit Court of Appeals affirmed the Order of the United States District Court for the Western District of Pennsylvania granting summary judgment in favor of the County of Allegheny and the individual homicide detectives since the District Court did not find that a municipal policy was the direct cause of a constitutional deprivation, and further explained that a municipality cannot be vicariously liable when one of its officers is not primarily liable.

In order to state a claim against a municipality, this Court has held that a municipality can be found liable

only when the municipality itself caused the constitutional violation. *Monell v. New York City Department of Social Services,* 436 U.S. 658, 694-95 (1978); *City of Canton v. Harris,* 489 U.S. 378, 387 (1989). The municipal policy or custom must be what "inflicts the injury." *Monell,* 436 U.S. at 694. This Court has specifically recognized that claims against a municipality cannot be based on respondeat superior or vicarious liability. *Monell,* 436 U.S. at 694-95; *Harris,* 489 U.S. at 387.

In this case, Whitley failed to meet his burden of proof of demonstrating that an unlawful policy or custom existed and that such policy was the proximate cause of the injury suffered. *Watson v. Abington,* 478 F.3d 144, 156 (3d Cir. 2007) ("In addition to proving that an unlawful policy or custom existed, a plaintiff also bears the burden of proving such a policy or custom was the proximate cause of the injuries suffered."). As such, Whitley's additional argument failed when he attempted to attach liability against Allegheny County on the premises of respondeat superior or vicarious liability. *Monell,* 436 U.S. at 694-95; *Harris,* 489 U.S. at 387; *City of Los Angeles v. Heller,* 475 U.S. 796, 798-799 (1986) (*per curiam).*

In his Petition, Whitley attempts to navigate around this and couch his argument in a way that suggests that the qualified immunity defense was extended to the County of Allegheny. It was not. As the Third Circuit wrote, "Whitley incorrectly characterizes the District Court's decision as impermissibly extending the qualified immunity defense to Allegheny County. The District Court found that Allegheny County could not be held liable on a section 1983 claim of failure to train where it determined that the individual employees, whose training was at issue,

did not violate a clearly established constitutional right. *City of Los Angeles v. Heller*, 475 U.S. 796, 798-99 (1986)." (Appendix A, p. 3a).

CONCLUSION

WHEREFORE, it is respectfully requested the Petition of Writ of Certiorari be denied.

Respectfully submitted,

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